IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 505 OF 1987
IN
L.A.R. NO. 115 OF 1984

The State of Maharashtra ...Appellant
(Orig.Opponent)

V/s.

Namdeo Pandurang Sutar
R/o. Takli, Tal.Karmala ...Respondent
(Orig.Claimant)

Mr.Bharat Mehta, AGP for the Appellant.
Mr.Rahul S. Kate for the Respondent.

CORAM : V.M. KANADE, J.

DATED : OCTOBER 8, 2007

ORAL JUDGMENT :-

. Heard the learned APP for the State and the learned Counsel for the respondents.

2. The appellant - State of Maharashtra is challenging the judgment and order passed by the Reference Court dated 3rd June, 1985 in LAR No.100/84.

3. Brief facts are that a vast extent of land located at Village Takli, Tal.Karmala, Dist.Solapur was acquired for Ujani project. The Reference court vide

its judgment and order awarded additional compensation of Rs.34,293.75 and also granted additional amount calculated at the rate of 12% on the market value from the date of notification under Section 4 plus 30% solatium on the additional amount and 15% solatium on the amount awarded by the SLAO. It is an admitted position that in respect of other similarly situated acquisitions, the State of Maharashtra has preferred Appeal No.477/87 and these appeals were dismissed by the Division Bench of this Court (Coram : V.S. Kotwal and N.P. Chapalgaonkar, JJ.) by judgment and order dated 26th February, 1990 in First Appeal No.477/87.

4. Though the learned APP for the State strenuously urged that the compensation awarded by the Reference court was excessive on various grounds, these submissions cannot be accepted since all these points were considered by the Division Bench in First Appeal No.477/87. There is, therefore, no merit in the submissions made by the learned APP for the State.

5. The learned APP, Shri Mehta further submitted

that the Reference Court erred in awarding interest at the rate of 12% as per the amended provisions of Section 23(1-A). It is submitted that the Apex Court in the case of **Kashiben Bhikabai and others v/s. Special Land Acquisition Officer and another, reported in (2002) 2 SCC 605,** has held that additional compensation of 12% would not be available to the claimant whereby the award was made prior to 30.4.82. It is an admitted position in this case that award was passed prior to 30.4.82. The Apex Court in para 17 of the said judgment has observed as under :-

> "Counsel appearing for the claimants contended that the claimants would be entitled to an additional compensation @ 12% as provided under Section 23(1-A) of the Act. This contention cannot be accepted in view of a Bench decision of this Court in Union of India v. Filip Tiago De Gama of Vedem Vasco De Gama (1990) 1 SCC 277 which held that additional compensation under Section 23(1-A) of the Act would not be available to a claimant in which the acquisition proceedings commenced and the award was made by the Collector prior to 30-4-1982. If the Collector made the award before 30-4-1982 then the additional amount under Section 23(1-A) cannot be awarded. The pendency of the acquisition proceedings on 30-4-1982 before the Collector was essential for attracting the benefit under Section 23(1-A) of the Act. It was held: (SCC pp.286-87, para 21)

> "21. Entitlement of additional amount provided under Section 23(1-A) depends upon pendency of acquisition proceedings as on 30-4-1982 or commencement of acquisition proceedings after that date. Section 30 sub-section (1)(a) provides that additional amount provided under Section 23(1-A) shall be applicable to acquisition proceedings pending before the Collector as on 30-4-1982 in which he has not made the award before that date. If the Collector has made the award before that date then, that additional amount cannot be awarded. Section 30 sub-section (1)(b) provides that Section 23(1-A) shall be applicable to every acquisition proceedings commenced after 30-4-1982 irrespective of the fact whether the Collector has made an award or not before 24-9-1984. The final point to note is that Section 30 sub-section (1) does not refer to court award and the court award is used only in Section 30 sub-section (2)."

No judgment taking a contrary view to the above-referred case was cited before us. Accordingly, it is held that the appellants would not be entitled to the additional compensation provided under Section 23(1-A) of the Act."

6. The ratio of the said judgment, in my view, squarely apply to the facts of the present case and as such, an additional compensation awarded and the rate of 12% will not be available to the claimant and to that extent, the order of reference will stand modify.

7. Shri Mehta, learned APP for the State further submitted that 30% solatium also would not be available to the claimant. This submission, however, cannot be accepted since the Apex Court in the case of **Kashiben Bhikabai (supra)** has held that in cases where order of reference is made after coming into force of the amendments introduced by Amending Act, 1984, claimant would be entitled to statutory solatium of 30% under Section 23(2) as amended. In para 16 of the said judgment, the Apex Court has observed as under :-

> "From the map shown to us we find that the acquired land is not far away from Surveys Nos.8 and 9. The total distance between the two may not be more than 60 to 70 yd from each other. Keeping these factors in view, we are of the opinion that the prevailing market price in the first week of December 1973 of the acquired land was Rs.2.38 per sq ft. In May 1974 when the notification under Section 4 was issued the price may have been a little higher than Rs.2.38 per sq ft as rapid development was taking place in and around the area where the land under reference was situated. Land comprising in Survey No. 8 which was sold, measured 2800 sq yd. Keeping in view the fact that large areas of land do not fetch the same price as a small piece of land and a large amount is required to be spent for developing the land, we fix the price of land at Rs.2.00 per sq ft instead of Rs.1.88 per sq ft, thus enhancing the compensation by Rs.0.12 per sq ft. The

> claimants would be entitled to statutory solatium @ 30% as has been held by a Constitution Bench of this Court in Union of India v. Raghubir Singh (1989) 2 SCC 754 as the award of the Reference Court was made after the coming into force of the amendments introduced by the amending Act of 1984."

8. Thus, this submission made by the learned APP for the State cannot be accepted. In the result, the First Appeal is partly allowed. The additional compensation paid to the claimant at the rate of 12% on the market value from the date of notification under Section 4, therefore, will not be available to the claimant. The said amount of Rs.28,857.65 will be deducted from the judgment and award by the Reference court. Rest of the award is confirmed.

9. Appeal is partly allowed in the above terms. Under the circumstances, there shall be no order as to costs.

(V.M. KANADE, J.)